

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Jul 17, 2014, 3:52 pm
BY RONALD R. CARPENTER
CLERK

No. 90431-6
Court of Appeals, Division I No. 69837-1-I

E CRF
RECEIVED BY E-MAIL

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

LANE POWELL, P.C., an Oregon professional corporation,

Respondent,

v.

MARK DeCOURSEY and CAROL DeCOURSEY, individually and the
marital community composed thereof,

Petitioners.

**RESPONDENT LANE POWELL, P.C.'S
ANSWER TO PETITION FOR REVIEW**

One Union Square
600 University, 27th Fl.
Seattle, WA 98101-3143
(206) 467-1816

McNAUL EBEL NAWROT &
HELGREN PLLC

Robert M. Sulkin
WSBA No. 15425
Malaika M. Eaton
WSBA No. 32837

Attorneys for Respondent

 ORIGINAL

TABLE OF CONTENTS

I. IDENTITY OF ANSWERING PARTY 1

II. RESTATEMENT OF ISSUE PRESENTED FOR REVIEW 1

III. RESTATEMENT OF THE CASE 1

 A. Lane Powell Enters Into a Contract with the DeCourseys for Legal Services 3

 B. Lane Powell Obtains a \$1.2 Million Verdict on Behalf of the DeCourseys in the Trial of the Underlying Lawsuit and Successfully Defends the Verdict on Appeal..... 3

 C. The Judgment Debtors Approach Lane Powell to Pay the Judgment; the DeCourseys Immediately Fire Lane Powell..... 4

 D. The DeCourseys Threaten Litigation and Refuse to Honor Their Obligation to Pay 5

 E. From the Outset, the DeCourseys Thumbed Their Noses at the Trial Court and, Without Justification or Excuse, Refused to Comply with the Court’s Orders 6

 F. As a Direct Result of Their Admitted Refusal to Comply with Numerous Court Orders, the DeCourseys’ Affirmative Defenses and Counterclaims for Malpractice are Stricken 8

 G. The DeCourseys Consistently Make Bizarre and Unfounded Conspiratorial Accusations Against Lane Powell, the Trial Court, and Others 12

 H. The DeCourseys Move (Twice) to Recuse Trial Court Judge Eadie and Vacate All Previous Orders..... 12

I.	The DeCourseys' Unsuccessful Appeal	16
IV.	ARGUMENT WHY REVIEW SHOULD BE DENIED	16
A.	There is No Issue of Substantial Public Importance.....	17
B.	There is No Conflict Among the Divisions of the Court of Appeals that This Court Should Resolve	18
C.	There is No Significant Issue of Constitutional Law	18
V.	CONCLUSION.....	20

TABLE OF AUTHORITIES

Cases

In re King,
168 Wn.2d 888, 232 P.3d 1095 (2010).....18

In re Marriage of Wallace,
111 Wn. App. 697, 45 P.3d 1131 (2002).....19

Mitchell v. Teck Cominco Alaska Inc.,
193 P.2d 751 (Alaska 2008).....19, 20

United States v. Jordan,
49 F.3d 152 (5th Cir. 1995).....19

Other Authorities

<http://www.judicialrecusal.com/foreign-law>.....19

Rules

RAP 13.4(c)(6)16

RAP 2.5(a)(3)18

I. IDENTITY OF ANSWERING PARTY

Respondent Lane Powell, PC, is the answering party.

II. RESTATEMENT OF ISSUE PRESENTED FOR REVIEW

Is judicial recusal required in a case when the allegation of the appearance of bias is based on speculation and illogical assumptions?

Is judicial recusal required in a case where the alleged financial impact on the trial court judge is so speculative and attenuated that there is no reasonable basis to believe that the case would have any impact on the trial court's personal finances?

Is judicial recusal required when a trial court is polite to litigants who are making accusations of bias?

III. RESTATEMENT OF THE CASE

In September 2007, Lane Powell represented the DeCourseys in a case brought against them (the "underlying lawsuit"). The DeCourseys, in turn, agreed to pay Lane Powell for its representation. Lane Powell prevailed at trial, obtaining a judgment for damages of over \$500,000, an award of attorney's fees including a 30 percent multiplier, and successfully defending the result on appeal up to this Court, again obtaining fee awards. Despite Lane Powell's work and an excellent result, the DeCourseys refused to pay Lane Powell.

After waiting more than two years, Lane Powell finally sued the

DeCourseys to recover the amounts owing. For nearly three years, the DeCourseys have turned the litigation into a farce, defying every single order they disagreed with, refusing to engage in discovery, and filing motion after meritless motion. After the trial court gave them numerous chances to comply with its orders, and explicitly warned them of the consequences of their recalcitrance, the court finally struck their counter-claims and affirmative defenses, finding their continued refusal to comply to be “without reasonable cause or justification and therefore [] willful and deliberate.” The DeCourseys, undeterred, continued on their campaign, seeking reconsideration (denied), a stay from the trial court (denied), a stay from the Court of Appeals (denied), discretionary review of 22 of the trial court’s orders (denied), and then finally came up with a new tactic: not one but two recusal motions in which they asked that all of the court’s previous orders be vacated.

After the Court of Appeals properly rejected their recusal arguments, the DeCourseys have made one more attempt to prolong this litigation and avoid paying the fees. Their recusal motions relied on various (unsupported) conspiracy theories and the notion that the judge was biased against them because of his wife’s part-time employment with a non-party with no interest in the case. Judges have an obligation to serve and may only exercise their discretion to recuse when the

circumstances require it. Here, they do not. The Court of Appeals properly applied the standards applicable to recusal decisions and rejected the DeCourseys' appeal. This Court should do the same.

A. Lane Powell Enters Into a Contract with the DeCourseys for Legal Services

Lane Powell entered into a written fee agreement ("Fee Agreement") with the DeCourseys in which Lane Powell agreed to represent the DeCourseys in the underlying lawsuit. CP 1480-85. The Fee Agreement required the DeCourseys to pay costs and attorneys' fees in consideration for Lane Powell's representation of them in the underlying lawsuit. *Id.*

Pursuant to the Fee Agreement, the DeCourseys agreed to: (1) engage Lane Powell to represent them at hourly rates, CP 1483; (2) promptly pay Lane Powell's invoices, CP 1484; (3) promptly raise any problems with the invoices; and (4) pay interest at nine percent per annum on any unpaid invoices, *id.*

B. Lane Powell Obtains a \$1.2 Million Verdict on Behalf of the DeCourseys in the Trial of the Underlying Lawsuit and Successfully Defends the Verdict on Appeal

Lane Powell's representation of the DeCourseys resulted in the DeCourseys prevailing at a 2008 trial in the underlying lawsuit and obtaining a judgment against Paul H. Stickney, Paul H. Stickney Real Estate Services, Inc., and Windermere Real Estate/-SCA, Inc. ("the

Judgment Debtors”) for damages in the amount of \$522,200.00, with an award of Lane Powell’s legal fees in the amount of \$463,427.00 and taxable costs of \$45,000.00, including a 30 percent multiplier. CP 1420-22. Lane Powell also obtained a settlement from one defendant of \$270,000, all over a house the DeCourseys bought for less than \$300,000.

The Judgment Debtors appealed. CP 3450. Over the next two and a half years, Lane Powell continued to provide legal services to the DeCourseys. CP 3492-97. Lane Powell successfully defended the judgment before both the Court of Appeals and this Court. CP 3449-85, 3488. Both courts awarded additional fees and costs. CP 3444-47 (\$47,600.61 at Court of Appeals); CP 3487-91 (\$11,978.89 from this Court). The DeCourseys, however, still did not pay any of these amounts to Lane Powell and, in fact, had not made a payment since 2008. CP 203. The DeCourseys want to keep the fees awarded to Lane Powell.

C. The Judgment Debtors Approach Lane Powell to Pay the Judgment; the DeCourseys Immediately Fire Lane Powell

After this Court denied the petition for review and before the mandate issued, the insurer for Windermere (one of the Judgment Debtors) approached Lane Powell about making a partial payment of the judgment to cut off interest accruals on the amount to be paid. CP 1439, 3503. On August 2, 2011, Lane Powell informed the DeCourseys about

Windermere's overture. CP 1439. The DeCourseys immediately terminated Lane Powell's representation to avoid paying fees they owed. CP 3506. To protect its rights to the outstanding fees and costs, Lane Powell filed and served an attorneys' lien on the same day. CP 3512-13. The lien was filed in accordance with RCW 60.40.010 and applicable law for the value of services rendered and costs advanced in an amount not less than \$384,881.66 plus interest after August 3, 2011. *Id.*

D. The DeCourseys Threaten Litigation and Refuse to Honor Their Obligation to Pay

Despite the work performed and excellent result achieved, the DeCourseys refused to pay Lane Powell. CP 1434-35. On September 22, 2011, an attorney sent a lengthy letter to Lane Powell on behalf of the DeCourseys with a long list of complaints they now claimed to have had with Lane Powell over the course of their four-year relationship. CP 1445-63. He also threatened litigation. CP 1463. There was no statement that the DeCourseys intended to pay Lane Powell. CP 1445-63.

When no payment was forthcoming, Lane Powell filed a complaint against the DeCourseys in early October 2011 for breach of contract, quantum meruit, and foreclosure of attorney's lien. CP 1-6. The DeCourseys' amended answer admitted that they entered into a contract with Lane Powell for its representation of them in the underlying lawsuit. CP

200-31 ¶ 5. They admitted Lane Powell's representation resulted in the DeCourseys obtaining a judgment for damages in the amount of \$522,200, and receiving an award of Lane Powell's fees in the amount of \$463,427 and taxable costs of \$45,000. *Id.* ¶¶ 7, 23 & 24. They admitted Lane Powell sent them regular invoices and the balance shown as of September 2011 was \$389,042.68. *Id.* ¶ 15. They admitted they had not paid since December 2008 and the lien was unpaid. *Id.* ¶¶ 14 & 28.

In addition, the DeCourseys counterclaimed for legal malpractice, breach of fiduciary duty, breach of contract, "Undisclosed Conflict of Interest," Consumer Protection Act violations, malicious prosecution, unjust enrichment, and extortion. *See generally id.* Their claims were far-ranging, including 207 paragraphs containing a litany of complaints. *Id.*

The DeCourseys likewise asserted numerous defenses. *Id.* ¶¶ 31-42.¹

E. From the Outset, the DeCourseys Thumbed Their Noses at the Trial Court and, Without Justification or Excuse, Refused to Comply with the Court's Orders

From the outset of the litigation, the DeCourseys refused to comply with court orders and made every effort to delay resolution of the

¹ These include: their termination of Lane Powell was permitted by the agreement (¶ 32); "failure of consideration," "prior breach," and "breach of contract" (¶ 33); "legal fee creep" (¶¶ 34-35); "estoppel" as to Lane Powell's quantum meruit claim (¶ 36); "unclean hands" (¶ 37); "malice" (¶ 38); "fraud" (¶ 39); "illegality" (¶ 40); "duress and/or coercion" (¶ 41); and failure to state a claim upon which relief can be granted (¶ 42).

case. They likewise moved to reconsider virtually all of the trial court's orders, sometimes more than once.

When Lane Powell discovered the DeCourseys had compromised its lien by collecting the full amount of their judgment in excess of \$800,000 (including significant amounts designated as attorneys' fees), granting a full satisfaction of judgment and depositing only the principal amount of Lane Powell's attorneys' fees into the Court Registry, Lane Powell moved the trial court for an order requiring the DeCourseys to deposit approximately \$57,000 into the Court Registry to account for accruing interest as provided in the lien. CP 506-16. The trial court granted the motion. CP 704-05. The DeCourseys moved for reconsideration, which motion was denied. CP 708-19, 1308. The DeCourseys refused to comply and did not seek a stay. CP 914-15.

When Lane Powell propounded discovery requests relevant to the DeCourseys' malpractice claims, they refused to produce massive amounts of relevant responsive documents on the claim that they were still entitled to maintain an attorney-client privilege over their communications with Lane Powell in the underlying lawsuit. CP 171-81, 815-22. The DeCourseys filed two, largely duplicative, motions seeking protection for these documents. CP 5917-25, 5997-6007, 36-54. Lane Powell opposed on the basis that the DeCourseys had waived the privilege due to the

nature of their counterclaims against Lane Powell. CP 461-62, 160-61. The court denied both motions, ruling the DeCourseys were not entitled to maintain their privilege assertions over the relevant and responsive documents Lane Powell requested. CP 232-33, 504-05. The DeCourseys moved to reconsider those orders and the motions were denied. CP 234-45, 588-89; see also CP 706-07. Nonetheless, the DeCourseys failed to produce the documents and did not seek a stay of the orders.

When it became clear the DeCourseys did not intend to comply with the trial court's orders, Lane Powell moved to compel the production of the documents. CP 752-60. The DeCourseys opposed, persisting in their claim of privilege. CP 942-52. Again, the trial court ordered the DeCourseys to produce the documents. CP 977-78. Again, the DeCourseys moved to reconsider (also denied) but refused to comply with the court's order and failed to seek a stay. CP 979-88, 1028-29.

F. As a Direct Result of Their Admitted Refusal to Comply with Numerous Court Orders, the DeCourseys' Affirmative Defenses and Counterclaims for Malpractice are Stricken

Due to the DeCourseys' continued refusal to comply with virtually every trial court order, Lane Powell was forced to move—three times—for contempt and discovery sanctions. CP 912-16, 1030-39, 1586-1675. The court granted all three motions and ordered the DeCourseys to pay Lane Powell's reasonable attorney fees. CP 1262-63, 2035-43, 2411-12. The

court found the DeCourseys' continued refusal to comply to be "without reasonable cause or justification and therefore [] willful and deliberate" (emphasis added) and "has prejudiced Plaintiff's preparation of this case." CP 1263. After both the Court of Appeals and the trial court denied the DeCourseys' (belated) request for a stay (CP 1266-67, 1342-43, 1393), and after the DeCourseys not only refused to comply with the trial court's orders but even ignored inquiries regarding their intentions for compliance, the trial court ultimately exercised its discretion and ordered their counterclaims and affirmative defenses stricken. CP 2035-43.

The trial court's order striking the DeCourseys counterclaims and affirmative defenses was thoughtful, careful, and deliberate. The trial court included pages of detailed findings, none of which the DeCourseys challenged on appeal. For instance, the court found that:

- The DeCourseys discovery responses to Lane Powell were "incomplete." CP 2036.
- "Despite these orders, the DeCourseys still withheld discovery based on the same objections the Court had previously rejected." CP 2037.
- The DeCourseys "did not comply with the Court's orders and did not seek a stay." *Id.*
- "Despite the fact that the [court's orders] consistently rejected the DeCourseys' privilege arguments, they continued to obstruct discovery ... The DeCourseys' arguments in this regard are unreasonable and frivolous." CP 2038.

- As a result, “Lane Powell’s efforts to litigate this case on the merits have been stymied.” *Id.*
- The trial court’s order on Lane Powell’s motion for contempt “found their continued refusal to comply to be ‘without reasonable cause or justification and therefore willful and deliberate.’” CP 2039.
- Despite the trial court’s explicit prior warning that “further and more serious sanctions, including the possibility of striking claims, defenses, or pleadings, or entry of default may follow from any further failure to abide by court orders or rules,” the DeCourseys “failed to comply with the” trial court’s order. CP 2039-40.
- The DeCourseys even ignored Lane Powell’s inquiries regarding their intentions for compliance. CP 2040.

The trial court explained:

The discovery violations by Defendants are substantial and have been repeated despite this court’s orders to compel. The imposition of further deadlines would not be likely to result in meaningful compliance. The discovery sought by Plaintiff is clearly material to its case and to its defense of Defendants’ counterclaims and affirmative defenses. After considerable reflection on this case, the court is unable to conceive of any lesser sanction than striking Defendants’ counterclaims and affirmative defenses that has any reasonable prospect of permitting Plaintiff to proceed to trial on the merits of its claim, in a reasonably timely manner.

CP 2041. The trial court again found that the refusal to comply with its orders had “been without reasonable cause or justification and therefore ... willful and deliberate[.]” *id.* (emphasis added), and that the DeCourseys

had substantially prejudiced Lane Powell's ability to prepare for trial. *Id.*

Thus, the court concluded (at CP 2042):

Having considered lesser alternatives, the Court finds that such alternatives are not warranted under the circumstances. ... Considering the DeCourseys' extended pattern of willful disregard of this Court's orders, and the fact that this Court specifically warned the DeCourseys that these sanctions would result from continued non-compliance, the sanctions imposed are the only appropriate sanctions here.

The DeCourseys' motion to reconsider the trial court's dismissal of their affirmative defenses and counterclaims was likewise denied as was their attempt to seek interlocutory review. CP 2242-53, 2413-14, 3280-81.

In denying the reconsideration motion, the trial court again made clear the care and thought that went into his decision:

Both before and after the entry of the July 6, 2012 Order, this Court has given substantial thought to the incentives that might persuade Defendants to engage in good-faith discovery, but on this record there is apparently nothing that the Court can do that would have that result, otherwise this motion for reconsideration would have been preceded by fully responsive answers to the outstanding discovery.

CP 2413-14. In other words, despite months and months of recalcitrance, the court remained willing to give the DeCourseys yet another chance if only they would abide by their discovery obligations. Because they would not, the consequences of their actions remained in place.

G. The DeCourseys Consistently Make Bizarre and Unfounded Conspiratorial Accusations Against Lane Powell, the Trial Court, and Others

When the DeCourseys were not disregarding the trial court's orders, they occupied their time making bizarre and unfounded conspiratorial accusations against Lane Powell, the trial court, and others. A short (and by no means exhaustive) list includes:

- The DeCourseys demanded the trial court "clear the appearance of impropriety from the record" and "take disciplinary action" as to alleged *ex parte* contact between the court and Lane Powell that simply never occurred. CP 415-18; see also CP 552-53, 588-89 .
- In connection with their eventual recusal motion, the DeCourseys made a veiled accusation against the entire King County Superior Court system, suggesting their case had been deliberately assigned to Judge Eadie as part of some conspiracy. CP 2708 n.1, 2753 n.1.
- They also accuse Judge Eadie of "bigotry towards DeCourseys" and "fraud." CP 2714-15.
- At the same time (and continuing throughout the case), they claimed that "[t]his entire case to date has been tainted with Lane Powell's fraud on the court." CP 2752.
- The DeCourseys claimed, with no evidence whatsoever, that the trial court "punished DeCourseys for filing an ADA AAA accommodation request." CP 2915.
- They argued the judge "encourag[ed]" them to claim privilege and "set [them] up for entrapment." CP 2920.

H. The DeCourseys Move (Twice) to Recuse Trial Court Judge Eadie and Vacate All Previous Orders

After refusing to comply with the trial court's orders, losing in

their attempt to seek discretionary review, and looking for a way to obtain a do-over, the DeCourseys demanded that Judge Eadie recuse himself and vacate all orders based on an alleged "conflict of interest" that was not disclosed. CP 2707-16. Their entire argument rested on the proposition that he is somehow biased against the DeCourseys by virtue of his wife's part-time employment as a Windermere agent. CP 2708-09.

They made this serious accusation despite knowing that Ms. Eadie did not even work out of the same office that was involved in the underlying lawsuit and that during the pertinent year she made as little as \$4,000 (and certainly less than \$20,000) for the entire year. CP 2725, 2723. At the time of the DeCourseys motion, it seems that Ms. Eadie had only one listing for a single condo in Shoreline. CP 2723. Moreover, Windermere was not a party to the case before Judge Eadie and had lost the underlying case before a different judge.

Further, the "support" for the DeCourseys motion was lacking. They presumed that "Windermere has been a benefactor to the Eadie family for almost a decade." CP 2710. They claimed that:

Judge Eadie's rulings against the DeCourseys have been so irrational, relentless, and prejudiced, and have departed so far from the accepted and usual course of judicial proceedings, it is hard to avoid the conclusion that, with the assignment of this case to Judge Eadie, the process was intended from the beginning to be an ambush.

CP 2864. They suggested that virtually all of the trial court's actions were part of some conspiracy to advance Lane Powell's interests and harm the DeCourseys. CP 2711-12.¹ The DeCourseys belatedly filed an affidavit of prejudice on August 12, 2013. CP 2786-89, 2825-26.

The Court denied the DeCourseys' motion on September 5, 2012. CP 2924-25. In denying the motion, the Court wrote (at CP 2924-25):

This case, *Lane Powell v. DeCoursey*, involves Plaintiff law firm's claim that Defendants have not paid the fees due Plaintiff for legal services rendered in a lawsuit involving Windermere Real Estate Company. Defendants, while they were being represented by Plaintiff, prevailed in that lawsuit and received a judgment in their favor that has now been satisfied as between Windermere and the parties to this action and concerning which all appellate remedies have been exhausted. As Plaintiff points out, both the Plaintiff and Defendants in this case were adverse to Windermere in the previous action.

Plaintiff's complaint in the case before this court makes no claims for relief from Windermere, nor does the Defendants' comprehensive and detailed Answer, Affirmative Defenses and Counterclaims. The present case was when filed, and remains today, an action brought by a law firm against a former client that it contends is obligated to it for unpaid fees. Windermere is not now, and never has been a party to this action.

Mrs. DeCoursey moved again seeking recusal and to vacate all of

¹ Their arguments relied on positions the trial court had properly rejected on numerous occasions, misstated the record, and ignored contrary evidence. For example, as they do here, they claimed the trial court allowed Lane Powell to violate court rules but ignored the fact the trial court had allowed them to file overlength briefs and otherwise violate court rules (including even on reply for their motion to recuse). E.g., CP 36-56, 189-96, 483-88, 2858-65, 5176-83.

Judge Eadie's orders. CP 5100-72. This motion was even more outlandish than the last. She demanded that the judge "apologize for using his status as a King County Superior Court judge to commit fraud." CP 5100. She accused him of using "his office to pursue a private agenda." CP 5100-01. She claimed that the trial court "functioned as a surrogate for Lane Powell and surreptitiously acted as a member of its legal team." *Id.*; *see also* CP 5109. She described the proceedings as a "Kangaroo Court." CP 5101, 5106, 5110. She again suggested that the entire King County Superior Court system was engaged in a conspiracy to stack the court against her "to achieve a pre-determined result," suggesting that "a fixer arranged [the] case assignment" to the trial court. CP 5102. She claimed Lane Powell and the trial court were sending secret signals to each other from the outset and that Lane Powell was "directing the court" and "calling the shots." *Id.*, 5105. She stated the trial court was "relying on advice given by Windermere's lawyers." CP 5104. She claimed that her own conduct in disregarding and refusing to comply with court orders was somehow "contrived" by Lane Powell and the trial court so that the court would have an excuse to strike her counterclaims and affirmative defenses. CP 5108. None of these claims were supported by appropriate evidence. The trial court likewise denied this motion. CP 5508-09. Lane Powell moved for summary judgment. The court granted that motion, CP

5522-27, specifically finding that Windermere “has no interest, direct or indirect, in the determination of the reasonableness of these fees or the hourly rates charged.” CP 5527.

I. The DeCourseys’ Unsuccessful Appeal

The DeCourseys appealed challenging only the recusal orders and one aspect of the summary judgment. The Court of Appeals rejected their arguments. As the Court stated, “[w]here an allegation of partiality rests on speculation and illogical assumptions, it is not reasonable.” Slip Op. at 1. The Court of Appeals articulated the correct standard, *id.* at 6, 8, and carefully applied it to the facts the DeCourseys claim mandated recusal, *id.* at 6-8, 9-10. The DeCourseys seek review.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

The DeCourseys’ petition for review is more notable for what it does not say than what it does. This is particularly so given the requirement that a petition for review include a “statement of the facts ... relevant to the issues presented for review.” RAP 13.4(c)(6). A key fact the DeCourseys’ discussion glosses over is that both parties in this case were adverse to Windermere in the underlying case. Moreover, the DeCourseys fail to mention the trial court’s repeated efforts to provide them with additional chances to comply with court orders, which speaks volumes as to the court’s efforts to be more than fair (and certainly not biased) in the

face of the DeCourseys' repeated and abusive conduct toward the court and Lane Powell. Further, their veiled accusations that the Court of Appeals judges appear biased against them as well are baseless. Pet. at 4-5. A fair view of the record here supports both the trial court's and the Court of Appeals' conclusion: recusal was not appropriate here and this case presents no issues that merit this Court's review.

A. There is No Issue of Substantial Public Importance

The appearance of fairness doctrine as applied to the narrow question of potential bias relating to a judge's spouse is not an issue of substantial public importance and is certainly not on these facts. Pet. at 13. The DeCourseys make no effort to show this issue arises frequently or is in any way difficult to resolve when it does. Moreover, as the DeCourseys admit, as the opinion below is unpublished, it has no impact on the doctrine in this state. Even if it was an issue of public importance, the DeCourseys exaggerate the holding below. The Court of Appeals did not hold, as they claim, that only an attack accusing every single Winder-merc agent of misconduct could support a recusal claim. Pet. at 13. Instead, the opinion identified the proper standard and properly and sensibly applied it to the facts here, taking into account the whole record, while the DeCourseys' recitation is taken wholly out of context. Slip Op. at 6-10.

B. There is No Conflict Among the Divisions of the Court of Appeals that This Court Should Resolve

As for the standard of review issue, the DeCourseys claim this Court should accept review of this case because other divisions of the Court of Appeals are failing to apply the proper standard this Court has recently articulated. Pet. at 19. It is unnecessary for this Court to grant review of this case to “resolve” a split between the Divisions. Indeed, according to the DeCourseys, the court resolved the issue in *In re King*, 168 Wn.2d 888, 899, 232 P.3d 1095 (2010). To the extent one exists, the Court should allow the other Divisions time to address the issue, rather than granting review of a case the DeCourseys claim applied the proper standard.

C. There is No Significant Issue of Constitutional Law

Review should not be accepted on the basis of claimed constitutional error, which was not presented to the trial court. RAP 2.5(a)(3). No court has ever adopted the extreme view of due process the DeCourseys advocate.

The purported financial impact of this case on the trial court is so speculative that there is no reasonable basis to believe this case impacted the trial court’s personal finances. Pet. at 17. It is illogical to assume the DeCoursey’s so-called campaign has or will have any effect whatsoever on Windermere’s business as a whole and certainly will have no effect on

the business of the trial court's spouse. Further, given the DeCourseys' fervor, there is no basis to assume the requirement they pay fees they owe to Lane Powell will have any impact on their "campaign." It is also illogical to assume that the trial court would have undue sympathy for Windermere agents who had been finally adjudicated by the Washington courts to have acted in unethical ways. *Id.* at 13.

The cases on which the DeCourseys rely undermine their position.¹ None of them deal with a situation in which both parties before the court would arguably trigger the same alleged bias. All are very different as to key facts. See *United States v. Jordan*, 49 F.3d 152, 157 (5th Cir. 1995) (extensive publicity brought out relationship between litigant and judge's husband). Indeed, *Jordan* establishes that this case would not require reversal, because even if there were an appearance of bias, it is harmless. *Jordan* at 158. The DeCourseys' failure to challenge the underlying rulings strongly suggests that they recognize the adverse rulings reflect the legal consequences of their positions, not some bias of the trial court. *In re Marriage of Wallace*, 111 Wn. App. 697, 706, 45 P.3d 1131 (2002).

The DeCourseys fare no better with *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.2d 751 (Alaska 2008). There, as they concede, the

¹ Some of their discussion appears to be taken without attribution from a website. Compare Pet. at 2 with <http://www.judicialrecusal.com/foreign-law>.

financial impact to the company in which the trial court's wife owned stock was not speculative. That company had a profit sharing agreement with Teck, the party before the court. Pet. at 18. Even then, *Mitchell* did not hold that this required recusal. *Id.* at 19 (conceding the *Mitchell* court remanded for further consideration). Moreover, the DeCourseys seriously misrepresent the ruling from *Mitchell*, claiming the case stands for the proposition that recusal is required when "a ruling for one party has the potential to benefit the judge's spouse economically." *Id.* What *Mitchell* actually addressed was whether recusal was required when the likely benefit had the significant potential to be more than *de minimus*. And even then, *Mitchell* did not hold that recusal was required.

This case does not merit the Court's review.

V. CONCLUSION

The DeCourseys have delayed justice long enough. The Court should deny their petition and end this case.

DATED this 17th day of July, 2014.

McNAUL EBEL NAWROT & HEIGREN
PLLC

By: 

Robert M. Sulkin, WSBA No. 15425
Malaika M. Eaton, WSBA No. 32837

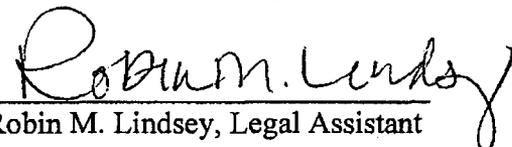
Attorneys for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on July 17, 2014, I caused a copy of the foregoing RESPONDENT LANE POWELL, P.C.'S ANSWER TO PETITION FOR REVIEW to be served by electronic mail to:

Mr. James E. Lobsenz
Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite 3600
Seattle, Washington 98104
lobsenz@carneylaw.com
Attorney for Appellants Mark and Carol DeCoursey

DATED this 17th day of July, 2014, at Seattle, Washington.

By: 
Robin M. Lindsey, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Robin Lindsey
Cc: lobsenz@carneylaw.com; Robert Sulkin; Malaika Eaton
Subject: RE: No. 90431-6--Lane Powell P.C. v. Mark and Carol DeCoursey--Respondent Lane Powell, P.C.'s Answer to Petition for Review

Received 7-17-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Robin Lindsey [mailto:RLindsey@mcnaul.com]
Sent: Thursday, July 17, 2014 3:46 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: lobsenz@carneylaw.com; Robert Sulkin; Malaika Eaton
Subject: No. 90431-6--Lane Powell P.C. v. Mark and Carol DeCoursey--Respondent Lane Powell, P.C.'s Answer to Petition for Review
Importance: High

Ladies and Gentlemen:

Respectfully submitted for filing in the above-referenced matter is **Respondent Lane Powell, P.C.'s Answer to Petition for Review.**

The attorneys filing this Answer are:

Robert M. Sulkin
WSBA No. 15425
rsulkin@mcnaul.com

Malaika M. Eaton
WSBA No. 32837
meaton@mcnaul.com

Thank you.

Robin M. Lindsey | Legal Assistant to

Robert M. Sulkin and Malaika M. Eaton
McNaul Ebel Nawrot & Helgren PLLC
600 University Street, Suite 2700
Seattle, Washington 98101
T (206) 467-1816 | F (206) 624-5128
rlindsey@mcnaul.com

Confidentiality Notice

This email transmission (and/or documents accompanying it) may contain confidential information belonging to the sender which is protected. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please notify us immediately to arrange for the return of the documents.